



1 coverage for HDC's clients. *Id.* at 11 ¶11, 22 ¶11. L&C, an Arizona law firm, represented  
2 the plaintiffs. *Id.* at 15 ¶¶42-43, 25 ¶42.

3 HDC filed a voluntary Chapter 11 bankruptcy petition on June 6, 2005 with the  
4 United States Bankruptcy Court for the District of Arizona. Dkt. #2 at 9 ¶1, 10 ¶7, 21 ¶1, 22  
5 ¶7. Shortly thereafter, HDC and L&C requested that the bankruptcy court appoint L&C as  
6 special non-bankruptcy counsel in the state court litigation (*see* Dkt. #7 at 3; Dkt. #7-2 at 3-6,  
7 11-15; Dkt. #11 at 9), a function that L&C performed until withdrawing as counsel on  
8 March 16, 2007 (Dkt. #2 at 15 ¶¶42-43, 25 ¶42; *see* Dkt. #7-2 at 22-23).

9 On July 19, 2007, HDC was reorganized as Reorganized Human Dynamics  
10 Corporation ("RHDC"). *Id.* at 10 ¶7, 22 ¶7. On December 11, 2007, RHDC initiated an  
11 adversary proceeding against L&C in the bankruptcy court alleging one count of fraudulent  
12 transfer. Dkt. #2 at 8-19. L&C subsequently filed this motion to withdraw the reference,  
13 requesting a jury trial in this Court. *Id.* at 1-7.

## 14 **II. Legal Standard.**

15 The Federal Rules provide that "[a] motion for withdrawal of a case or proceeding  
16 shall be heard by a district judge." Fed. R. Bkrtcy. P. 5011(a). Congress has given the  
17 district courts the authority to "provide that any or all cases under title 11 and any or all  
18 proceedings arising under title 11 or arising in or related to a case under title 11 shall be  
19 referred to the bankruptcy judges for the district." 28 U.S.C. § 157(a). Consequently, the  
20 Local Rules state that "the district court refers to the bankruptcy court for this District all  
21 cases under Title 11 and all proceedings under Title 11 or arising in or related to a case under  
22 Title 11." Rule 5011-1.

23 This reference is not unconditional, however, and must be withdrawn under certain  
24 circumstances. 28 U.S.C. § 157 allows the bankruptcy court to hear jury trials only in limited  
25 situations:

26 If the right to a jury trial applies in a proceeding that may be heard under this  
27 section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial  
28 if specially designated to exercise such jurisdiction by the district court and  
with the express consent of all the parties involved.

1 *Id.* at §157(e). Thus, the Court must withdraw the reference if the movant can demonstrate  
2 both a right to a jury trial and a lack of consent to a jury trial by the Bankruptcy Court or the  
3 parties. *See Dyer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1194 (9th Cir. 2003) (“[T]he  
4 bankruptcy court is unable to preside over a jury trial absent explicit consent from the parties  
5 and the district court.”).

### 6 **III. Analysis.**

#### 7 **A. Satisfaction of Section 157(e).**

8 The Court finds that both elements for withdrawal under section 157(e) have been  
9 satisfied. RHDC disputes both elements in its response, but in reality its arguments only  
10 address the issue of entitlement to a jury trial and do not touch upon consent. RHDC does  
11 not contest that L&C’s answer to the complaint clearly states that it does not consent to a jury  
12 trial by the Bankruptcy Court. Dkt. #2 at 29 ¶ 83. Consequently, the reference must be  
13 withdrawn if L&C has a right to a jury trial.

14 The Seventh Amendment requires a trial by jury “in suits of common law” which  
15 encompassed all “suits in which *legal* rights were to be ascertained and determined in  
16 contradistinction to those where equitable rights alone were recognized, and equitable  
17 remedies were administered.” *Granfinanciera v. Nordberg*, 492 U.S. 33, 41 (1989)  
18 (emphasis in original) (quotations and citation omitted). Suits to recover fraudulent transfers  
19 are legal in nature and subject to the Seventh Amendment’s protection because such suits  
20 were traditionally brought in courts of law and the relief sought is one of monetary damages.  
21 *Id.* at 12, 14-15.

22 This right, however, is not absolute. A bankruptcy court has “actual or constructive  
23 possession of the bankruptcy estate” and decides “whether to allow claims against the  
24 estate.” *Id.* at 57 (quotations and citation omitted). Thus, “a creditor’s right to a jury trial on  
25 a bankruptcy trustee’s preference claim depends upon whether the creditor has submitted a  
26 claim against the estate,” because such a claim would constitute “part of the process of  
27 allowance and disallowance of claims [or an] action integral to the restructuring of debtor-  
28 creditor relations,” both of which are “triable in equity.” *Id.* at 58.

1       The parties agree that L&C has filed no claim against the estate. RHDC argues,  
2       however, that L&C submitted itself to the equity jurisdiction of the Bankruptcy court – and  
3       lost its right to a jury trial – by applying for and becoming special counsel for HDC. Dkt.  
4       #7 at 8-9. RHDC argues that this action is “no different” than filing a claim against the estate  
5       because L&C “asked for and received the opportunity to act on behalf of the debtor and  
6       subject to Bankruptcy Court rules and procedures.” *Id.* at 10. RHDC cites no authority  
7       directly supporting this assertion, but instead relies by analogy on two cases.

8       RHDC’s first case, *Coral Petroleum, Inc. v. Walker (In re Coral Petroleum)*, 249 B.R.  
9       721 (Bankr. S.D. Tex. 2000), held that a defendant had waived his right to a jury trial through  
10      his appointment as trustee to the estate, but this was because “trusts are special creatures over  
11      which courts of equity had virtually exclusive jurisdiction.” *Id.* at 734-735. RHDC’s second  
12      case, *AVN Corporation v. Namer (In re AVN Corp.)*, 235 B.R. 417 (Bankr. W.D. Tenn.  
13      1999), held that defendant had waived his Seventh Amendment rights by filing a proof of  
14      claim, but this was because “the filing of a proof of claim triggers the process of allowance  
15      and disallowance of claims.” *Id.* at 423. Because an appointment as special counsel does  
16      not involve the special equity considerations of a trust, nor the “process of allowance and  
17      disallowance of claims,” *Granfinanciera*, 492 U.S. at 58, it does not constitute a submission  
18      to the Bankruptcy Court’s equity jurisdiction. *See In re Com 21*, No. C-04-03396 RMW,  
19      2005 WL 1606357, at \*10 (N.D. Cal. 2005) (Even though the Bankruptcy Court authorized  
20      counsel’s employment and oversaw counsel’s conduct, the District Court rejected the  
21      “sweeping conclusion that all disputes between a bankruptcy trustee and counsel are  
22      automatically equitable claims without a right to a jury trial.”).

23      L&C applied to represent HDC only in the state court litigation and filed a motion to  
24      withdraw as council on February 23, 2007 (Dkt. #7-2 at 21-23), more than nine months  
25      before RHDC initiated this adversary proceeding. Dkt. #7-2 at 8-19. Thus, even though  
26      L&C was accountable to the Bankruptcy Court, that court’s oversight did not involve  
27      allowance and disallowance of claims nor the unique exercise of equity jurisdiction. The  
28      claim of fraudulent transfer remains one at law and L&C is entitled to a trial by jury.

